In the High Court of Uttaranchal, at Nainital.

1- A.O. No. 1090 /2001 (Old No. 422 of 1996)
National Insurance Company Ltd… … Appellant.
Vs.
Smt. Swara Devi .. Respondent

2- A.O. No. 1590/2001
National Insurance Company Ltd….. Appellant.
Vs.
Brij Mohan .. Respondent

3- A.O. No. 1088/2001
National Insurance Company Ltd. .. Appellant.
Vs.
Brij Mohan .. Respondent

4- A.O. No. 1093/2001
National Insurance Company Ltd… … Appellant.
Vs.
Satish Kumar .. Respondent

5- A.O. No. 1089/2001
National Insurance Company Ltd… … Appellant.
Vs.
Satish Kumar .. Respondent

6- A.O. No. 1087/2001
National Insurance Company Ltd……. Appellant.
Vs.
Rama Rani .. Respondent

7- A.O. No. 1619/2001
National Insurance Company Ltd. … Appellant.
Vs.
Meena Nair .. Respondent

8- A.O. No. 1390/2001

National Insurance Company Ltd. ... Appellant.

Vs.

Surjeet Kumar .. Respondent

9- A.O. No. 1386/2001

National Insurance Company Ltd..... Appellant.

Vs.

Rajesh Kumar .. Respondent

10- A.O. No. 1591/2001

National Insurance Company Ltd. ... Appellant.

Vs.

Lokesh Maheshwari .. Respondent

11- A.O. No. 1592/2001

National Insurance Company Ltd... ... Appellant.

Vs.

Laxman Goel .. Respondent

Sri B.K. Gupta, learned counsel for the appellants.

Sri Rajendra Dobhal, learned counsel for the respondents.

Date: 17-8-2004

Coram: Hon'ble Mr. Justice P.C. Verma, J.

Hon'ble Mr. Justice B.S. Verma, J.

These appeals have been filed by the National Insurance Company, against one and another awards made by the Motor Accident Claims Tribunal, Tehri Garhwal, in Motor Accident Claim Tribunal Case nos. 74/1993, 64/1993, 66/1993, 75/1993, 65/1993, 68/1993, 70/1993, 73/1993, 69/1993, 64/1993 and 72/1993 respectively.

2- The Motor Accident Claims Tribunal allowed the claims of the claimants vide impugned award dated 18-7-1995, granting them compensation with interest of 12% per annum. The accident took place on 27.6.1993 at village Bamunda, P.S. Narendra Nagar, District Tehri Garhwal at about 12.15 p.m. when the injured/deceased passengers were traveling in vehicle no. DBL 4706 from Modi Nagar to Uttarkashi. The vehicle fell down in the ditch and thereby causing death/injuries to the passengers. Undisputedly the vehicle was a goods-carrier and grounds taken in these appeals are that in a goods-carrier vehicle passengers were not allowed to travel. They were unauthorized passengers and only the driver and employee or the ownerwere entitled to compensation. Owners of the goods are hirer of a goods vehicle and they were not covered under the insurance policy. The passengers were gratuitous passengers, therefore no compensation could be paid.

3- The learned counsel for the appellant relied on the Apex Court's judgment in the matter of *National Insurance Company Ltd. Vs. Baljit Kaur and others; (2004) 2 S.C.C. page 1,* to submit that the tribunal did not record any findings as to whether the owners of the goods were covered under the insurance policy and whether any premium was paid or not. He submitted that since clause (b) (i) was inserted to section 147 of the Motor Vehicles Act, in 1994, therefore insurance made after 1994, owners of the goods are insured by the insurance company. Since the policy under which liability of payment of compensation was to be determined has covered the owners of goods, therefore the tribunal fell into error in fastening the liability on the insurance company.

4. The Apex Court in the case of *National Insurance Company Vs. Baljit Kaur (supra)* was dealing with the payment of compensation to the gratuitous passengers. Here the deceased or the insured or the owners of the goods were going to perform a 'Bhandara' with their goods by which the 'Bhandara' was to be performed. They all were going to participate in 'Bhandara'. However, the tribunal has not recorded any finding as to whether the owners of the goods were covered under the insurance policy or not and the liability of the insurer or the insured.

5. The Apex Court in the case of *National Insurance Co. Ltd. Vs. Baljit Kaur (supra)* in para-21 directed the insurance company to satisfy the award amount in favour of the claimant if already not satisfied and receive the same from the owner of the vehicle. Para-21 of the aforesaid judgment is reproduced as under:-

> *"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the*

insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

6- In view of the aforesaid directions of the Supreme Court, under Article 142 of the Constitution of India, to meet the ends of justice, the Insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the awards and shall recover the amounts of the same from the insured/owner if the liability of the insured/owner is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeals are disposed of accordingly subject to the directions aforementioned. The amount of compensation, if deposited here, shall be transmitted to the concerned Motor Accident Claims Tribunal.

(B.S.Verma,J.) **(P.C.Verma,J.)**

ISB